

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-211789**DATE:** August 23, 1983**MATTER OF:** Wayne H. Coloney Company, Inc.**DIGEST:**

1. Protest alleging that Government improperly used proprietary data is denied where protester has not shown that data was marked proprietary or disclosed in confidence.
2. Subcontractor's allegation that prime contractor acted improperly concerns a dispute between private parties and will not be considered by GAO.

Wayne H. Coloney Company, Inc. (Coloney), protests the award of a contract to any firm other than itself under invitation for bids No. DAAH01-83-B-0258 issued by the United States Army Missile Command (Army) for WHC-81X containers. These containers are used to transfer and store the Hellfire Missile. Coloney protests that the Army is using Coloney's proprietary drawings without authorization.

The protest is denied in part and dismissed in part.

This Office may recommend a sole-source award to a protester who has been injured by the Government's improper use of the protester's proprietary data. See Andrulis Research Corp., B-190571, April 26, 1978, 78-1 CPD 321. Before we will grant this relief, however, the protester must prove by clear and convincing evidence that his proprietary rights have been violated. Id. To meet this burden, the protester must demonstrate that the material was marked proprietary or confidential or it was disclosed in confidence and the data involved significant time and expense in preparation and contained material or concepts that could not be independently obtained from publicly available literature or common knowledge. See John Baker Janitorial Services, Inc., B-201287, April 1, 1981, 81-1 CPD 249.

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The record shows that the Army obtained the drawings used in the present solicitation from PDC Associates, Inc. (PDC), under a 1981 contract which required PDC to deliver to the Army modified WHC-81X containers and supporting documentation for the modifications. PDC received the drawings from Coloney under a subcontract with Coloney. Notably, both the Army-PDC contract and the PDC-Coloney contract required documentation delivered with the containers to be nonproprietary. In a letter from Coloney to PDC, Coloney states that the only supporting documentation for the modified containers is the drawings.

Coloney now claims that under its subcontract with PDC, it was not required to deliver drawings for the complete container design. However, since Coloney has not submitted any evidence to show that it marked the drawings proprietary or disclosed them in confidence, even if Coloney was not required to submit the drawings to PDC, Coloney has not met its burden of affirmatively proving that the drawings are its proprietary material. See John Baker Janitorial Services, supra; Andrus Research Corp., supra. Accordingly, the protest is denied.

Coloney also has alleged that it only submitted the complete container design drawings to PDC because PDC threatened not to pay Coloney under the subcontract if Coloney refused to submit the drawings. To the extent that Coloney is alleging that PDC acted improperly or illegally, the protest involves a dispute between two private parties and is not for resolution by the General Accounting Office. See Garrett Corporation, Pneumatic Systems Division, B-207294, May 10, 1982, 82-1 CPD 451. Accordingly, this protest ground is dismissed.

for Harry R. Van Cleave
Comptroller General
of the United States